

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

St. Joseph's Medical Center

Employer

and

Case No. 2-RC-22157

**International Brotherhood of
Security Guards, Local 971**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Burt Pearlstone, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has designated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding¹, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.

2. St. Joseph's Medical Center, a New York State not-for-profit corporation, operates an acute care hospital at 127 South Broadway, Yonkers, New York which is the only facility involved herein. Annually, in the course and

¹ The parties stated their respective positions on the record, but only the Employer submitted briefs. The arguments of the parties have been duly considered.

conduct of its operations, the Employer derives gross revenues in excess of \$250,000, and purchases and receives goods and services valued in excess of \$10,000 directly from suppliers located outside the State of New York. The parties stipulated and I find, based upon the record, that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that International Brotherhood of Security Guards, Local 971, herein the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act. Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent all full-time and regular part-time, including all regular per diem, security officers and sergeants employed by the Employer, excluding all other employees, professional employees, non-security personnel, and supervisors, as defined in the Act. Respondent stipulated to the unit as petitioned for, except it contends that the sergeants are supervisory employees within the meaning of Section 2(11) of the Act and should be excluded from the unit. The parties conceded that the Board's established standard for finding temporary employees to be regular part time employees should be employed in determining the eligibility of per diem security officers to vote. Thus, the parties agreed that the standard set forth in *Davison-Paxon, Co.*,

185 NLRB 21 (1970) is the appropriate measure of voter eligibility herein. Thus any per diem security officer who has been employed for an average of 4 or more hours per week for the last quarter prior to the eligibility date for the election will be eligible to vote in the election ordered herein.

The record establishes that the Employer operates a medical center in Yonkers, New York that consists of a 387-bed acute care hospital, a nursing home, a family practice residency program, an urgent care center, a walk-in clinic, a specialty clinic, a methadone clinic and a continuing day treatment center. The Employer provides security for its facility through its security department. The Security Department is under the direction of Richard Baker who holds the title of Director of Security. Mr. Baker works Monday through Friday from 8:00AM through 5:00PM. While Baker is not present at the Employer's facilities, he can be contacted at home by use of his beeper. Assisting Mr. Baker in the management of the department is the Chief of Security John Calhoon and a lieutenant position that is presently filled by Ed Farrell. The Chief is present at the facilities from Monday through Friday from 8:00AM through 5:00PM. The lieutenant works five days per week, with every other weekend off. His hours are from 7:00AM through 3:00PM. The security office contains a desk for the chief with the adjacent desk and telephone reserved for the exclusive use of the sergeants.

All security personnel, except the Director and the Chief, are required to clock in when they arrive. The lieutenant and sergeants wear a white shirt with gold nameplate, and blue pants. The security officers wear a blue shirt with silver

nameplate, and blue slacks. The Security Department provides around-the-clock, seven days per week security coverage for the Employer's facilities. As such, there are three shifts running from 7:00AM to 3:00PM, 3:00PM to 11:00PM and 11:00PM to 7:00AM. The Employer employs five individuals in the classification of sergeant, the sole classification in dispute herein², and some 22 security officers.

Security officers are assigned either to defined posts in various areas throughout the facilities or they are assigned to a patrol. Security officers answer security codes and tour the parking lot. Sergeants will also on occasion respond to security codes. Generally speaking, the security officer is responsible for the ebb and flow of patient and visitor traffic throughout the medical center. Also during a shift, a security officer may be pulled from their assignment and given a patient watch. A patient watch occurs when medical personnel determine that a patient is in need of constant observation for their own safety as well as the safety of other patients and staff. The job descriptions for both the sergeant position and security officer position contains the same mission and same physical demands and qualifications. The record establishes that the Employer calls the sergeant and lieutenant "supervisor" and this designation appears on the written report of counseling issued to security officers.

When security officers arrive for their shift, they receive their particular assignments for that day from the sergeant. The sergeant appears to decide which post an officer will be given based upon the officer's personal

² The parties stipulated that all of the sergeants fell into the same classification and as such whatever determination is made herein will apply to all.

characteristics, size and strength and initiative. Thus someone who is strong, assertive and motivated will be assigned to the Emergency Room rather than to the nursing home lobby which is a far more tranquil setting. The sergeant is also responsible for assigning security officers to a patient watch based upon availability of personnel and an assessment as to capability to perform such duty. In the event someone has called in sick for the shift the sergeant who receives the call will endeavor to find a replacement. In the event someone is coming in late, the sergeant seeks to have someone from the previous shift remain until the employee arrives. The sergeant has the authority to decide whether to approve or deny a security officer's request to leave work early. Sergeant Walter Villavicencio testified that he was confronted by the situation of a security officer who had become ill and requested permission to leave. He ascertained that he could not get a replacement for 90 minutes and therefore had the ailing security officer wait until she was replaced. The sergeant also decides when to schedule the security guards' breaks, including lunch breaks, during the shift.

Employees are scheduled to receive their performance appraisals each year on the anniversary of their date of hire. The Chief prepares the evaluation with the oral input from the sergeants. The Chief's draft then goes to the Director who finalizes the appraisal rating. There is no evidence what if anything happens to an employee as a result of the appraisal process. Further, due to the illness of the Chief in recent time employees have not received their appraisal evaluations.

Sergeants start at a salary rate of \$9.75 per hour. This amount represents about \$1.75 more than the other security officers are paid. However, all security

officers receive the same benefits package regardless of rank or title. Discipline of employees comes within the authority of sergeants. Sergeants have and exercise the authority to give verbal warnings to employees. The record establishes several examples of subsequent incidents that lead a sergeant to issue a subsequent document to the employee that is entitled "Counseling Report Notes of Informal Discussion". These counseling reports deal with employee conduct in the areas of lateness, improper usage of the hospital's telephones for personal use, and improper use of hospital copier and consequential absence from his or her post. These reports form the basis for the imposition of subsequent greater discipline.

As noted above, the Employer, contrary to the Petitioner, contends that the sergeants are supervisors within the meaning of the Act. The Employer argues that the Employer has a direct and meaning role in the discipline of employees and uses independent discretion in assigning security officers to their posts. Petitioner contends that the sergeants are merely lead persons who are paid more because as a result of their greater seniority and who do not possess any real authority to exercise independent judgment in assigning posts or in dispensing discipline.

Section 2(11) of the National Labor Relations Act defines a supervisor as follows:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign or reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well established that Section 2(11) of the Act must be read in the disjunctive, and that an individual therefore need possess only one of the enumerated indicia for there to be a finding that such status exists. *Concourse Village, Inc.*, 276 NLRB 12 (1985).

I note that the party that proposes the exclusion of an individual or group of employees based upon their status as a supervisory employee bears the burden of establishing that such status, in fact, exists. *Ohio Masonic Home, Inc.*, 295 NLRB 290,293 (1989). A review of the duties and responsibilities of the sergeant discloses that many of their duties are routine or reportorial in nature and would not be sufficient to establish supervisory status. For example, the mere fact that the sergeant has oral input into the appraisal without any evidence that the comments made by the sergeant would impact upon the security officers' terms and conditions of employment, does not constitute the type of authority that would render a finding of supervisory status. Also the sergeant's scheduling breaks appears to be done based solely upon availability and is similarly routine in nature. In filling vacancies due to employee absence, the sergeant either refers to the approved list of per diems or refers to the schedule and makes calls to persons on the list until someone agrees to come in. In replacing someone who is late the sergeant seeks a volunteer from the previous shift to remain until the assigned security officer appears for work.

However, the record here does clearly reflect that the sergeants possess and exercise authority to discipline security officers. They have issued oral warnings to employees for lateness and attendance issues, as well as for misuse

of company property. When, in the discretion of the sergeant, such conduct requires a corrective written documentation, he or she possess the authority to issue such written report for placement in the employee's personnel file. This report forms the basis for the imposition of greater disciplinary action, such as suspension. See *K.B.I. Security Services, Inc.* 318 NLRB 268 (1995); and *DST Industries, Inc.*, 310 NLRB 957, 958 (1993) Similarly, the sergeant uses independent judgment in the assignment of certain of the posts. While much of the assignment process appears to be routine in nature, the sergeant must evaluate the skills and characteristics of employees on the shift when making some of the more sensitive assignments, such as who will work in the emergency room and who will do a patient watch. Thus while the areas in which sergeants may exercise independent judgment are limited, they are not insignificant. See *Brown & Root, Inc.* 314 NLRB 19 (1994)

In addition to the criteria enumerated in Section 2(11) there are numerous secondary criteria that the Board relies upon in establishing the presence or lack of supervisory status. I find that the sergeants meet a number of such criteria.

I note that the sergeants have historically been referred to as supervisors and sign as such in the Counseling Report. Moreover, should sergeants be found to be nonsupervisory, the ratio of supervisors to non-supervisory personnel is increased dramatically. This would further amount to a finding that out of 21 weekly shifts – a majority, including every other weekend, would be unmonitored by on-site supervisory personnel. Such findings, while not dispositive, clearly

enter into Board consideration when determining a supervisory issue.

Pennsylvania Truck Lines, 199 NLRB 641 (1972).

Based upon the foregoing, I find that under the statutory scheme of Section 2(11) as well as the secondary criteria traditionally relied upon by the Board, sergeants are properly found to be supervisors within the meaning of the Act, and thus are not included in the appropriate bargaining unit.

For all of the foregoing reasons, I find that the following constitutes a unit that is appropriate for purposes of collective bargaining:

All full-time, and regular part-time (including per diems*) security officers employed by the Employer, excluding all other employees, professional employees, non-security personnel, and supervisors, as defined in the Act.

* The parties stipulated that per diem security officers who meet the Board's *Davison-Paxon* standard are eligible to vote

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.³ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they

³ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01AM of the day of the election". Section 103.20 (c) of the Board's Rules. In addition, please be advised that the Board had held that Section 103.20 (c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01 AM of the day of the election, if it has not received the notices.

were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been reheard or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴ Those eligible shall vote on whether or not

⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB No. 50 (October 26, 1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **December 28, 1999**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

they desire to be represented for collective-bargaining purposes by International Brotherhood of Security Guards, Local 971.⁵

Dated at New York, New York
December 21, 1999

(s) *Daniel Silverman*
Daniel Silverman
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code 177-8520

⁵ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 Fourteenth Street, NW Washington, D.C. 20570. This request must be received by the Board in Washington by **January 4, 2000**.